# FY 2023 Comprehensive

**Federal Annual Monitoring Evaluation (FAME) Report**

**State of Michigan**

**Michigan Occupational Safety and Health Administration**



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# Executive Summary

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan’s performance for Fiscal Year (FY) 2023, and its progress in resolving outstanding findings and/or observations from previous FAME reports. This report assesses the current performance of the Michigan Occupational Safety and Health Administration (MIOSHA) 23(g) compliance program in the context of agreed upon monitoring measures.

A detailed explanation of the findings and recommendations of the MIOSHA performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. The FY 2022 Follow-up FAME identified two continued findings and two continued observations. In this report, one finding and the observations have been closed. The finding related to the State Plan’s penalty structure remains open. Four new observations have been identified. A summary of the continued finding is found in Appendix A, New and Continued Findings and Recommendations. A summary of all observations is found in Appendix B, Observations and Federal Monitoring Plans. Appendix C describes the status of previous findings with associated completed corrective actions.

The Michigan Occupational Safety and Health Strategic Plan for FY 2019 to FY 2023 established three primary strategic goals: 1) Help assure improved workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities; 2) Promote employer and worker awareness of, commitment to, and involvement with safety and health to effect positive change in the workplace culture; and 3) Strengthen public confidence through continued excellence in the development and delivery of MIOSHA’s programs and services. The FY 2023 Performance Plan provided the framework for accomplishing the goals of the strategic plan by establishing specific performance goals for FY 2023. MIOSHA reduced their overall inspection projection from 4,108 to 4,039 inspections after completing 3,599 inspections during FY 2022.

In the FY 2023 State OSHA Annual Report (SOAR), MIOSHA provided information that outlines their accomplishments toward meeting their Five-Year Strategic Plan. The information has been reviewed and analyzed to assess their progress in meeting performance plan goals. MIOSHA is committed to achieving the goals as well as the state activity mandated measures (SAMM). Nine (9) of 12 annual performance goals have been met or exceeded. Goals not met during the year included reduction in total incident rates within specified industries, however, five of the eight industries saw reductions in Total Recordable Case (TRC) rates exceed the reduction goal. Reduction in general industry fatality rate is difficult for comparison purposes due to the impact of the COVID-19 pandemic and associated fatality cases. The last strategic goal element not met was the total number of participants in MIOSHA Training Institute courses. Notably, MIOSHA saw a considerable decrease in fatality and total recordable incident rates for the construction industry.

Quarterly monitoring meetings were held during FY 2023, at which time the State Activity Mandated Measures (SAMM) report and the State Indicators Report (SIR) were reviewed and discussed with MIOSHA management staff. The FY 2023 SAMM is Appendix D of this report.

# State Plan Background

#### Background

The Michigan Department of Labor and Economic Opportunity (LEO), formed in June 2019, is

responsible for the state’s regulatory services and programs that protect and promote the labor market, including the MIOSHA program. The program received initial approval on October 3, 1973 and certification on January 16, 1981. MIOSHA includes the General Industry Safety and Health Division (GISHD); Construction Safety and Health Division (CSHD); Appeals; Consultation, Education and Training (CET); and the Technical Services Division (TSD). Enforcement of safety and health rules, adoption of standards, consultation services and other related OSHA activities are conducted within these five divisions. MIOSHA’s CET division administers the private sector on- site consultation program funded under a 21(d) grant.

The mission of MIOSHA is to help protect the safety and health of Michigan workers with the overall mission to reduce workplace fatalities, injuries and illnesses. This is done through a combination of compliance, education and training, and consultation activities supported by standards promulgation, data management, and administrative functions. MIOSHA has historically focused its efforts on the most hazardous industries and occupations.

Susan Corbin was appointed Acting Director of LEO in October 2020 and Director in August 2021. Barton Pickelman is MIOSHA’s Director, and each of the five divisions has a division director.

MIOSHA benchmarks include 56 safety and 45 health compliance officers. At the start of FY 2023, funding was allocated for 43 safety and 31 health full-time equivalents (FTE). MIOSHA’s FY 2023 grant included funding totaling $22,662,900, which includes a $660,900 overmatch. There were no furloughs or hiring freezes during FY 2023.

#### New Issues

None.

# Assessment of State Plan Progress and Performance

#### Data and Methodology

OSHA has established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A four-person team, which included a whistleblower supervisor, was assembled to conduct the on-site case file review from January 29 – February 2, 2024. A total of 215 safety, health, and whistleblower protection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2022, through September 30, 2023). The selected population included:

* + - Thirty-seven (37) fatality case files,
    - Twenty-eight (28) non-fatality inspections by the Construction Division,
    - Forty-five (45) non-fatality inspections by the General Industry Division,
    - Forty (40) whistleblower case files; fifty (50) whistleblower Administrative Closure files,
    - Fifteen (15) phone/fax complaint and referral files.

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

* + - State Activity Mandated Measures Report (Appendix D)
    - State Information Report
    - Mandated Activities Report for Consultation
    - State OSHA Annual Report
    - State Plan Annual Performance Plan
    - State Plan Grant Application
    - Quarterly monitoring meetings between OSHA and the State Plan
    - Full case file review

Each state activity mandated measure has an agreed-upon further review level (FRL), which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 SAMM report and includes the FRL for each measure.

#### Review of State Plan Performance

### PROGRAM ADMINISTRATION

* 1. Training

MIOSHA has implemented its own training program, as outlined in MIOSHA instructions TRG- 05-1R3 and TRG-09-1R2. MIOSHA’s General Industry Safety and Health Division (GISHD) and Construction Safety and Health Division’s (CSHD) in-house training on occupational safety and health standards is coordinated with standard courses that are offered by the MIOSHA Training Institute (MTI). In FY 2023, courses offered by MTI were well-received by participants.

Initial field training for technical staff is provided during the probationary period and is scheduled throughout the state to enhance understanding of hazards at a variety of worksites and industries. Safety Officers (SO) and Industrial Hygienists (IH) are required to attend and complete compliance training outlined in the instructions during his/her employment. The purpose of the training courses is to provide the SO/IH with technical knowledge, skills, and information pertaining to MIOSHA inspection requirements. MIOSHA’s equivalent to the OSHA Training Institute’s (OTI) course #1000, Initial Compliance, and MIOSHA’s General Industry Standards (General Industry Safety and General Industry Health) courses are required to be completed within the first year of a SO/IH’s career. The instructions’ appendices list courses required to be taken by technical staff during their first year, during years one through three, through year five, during years six through eight, and in year nine and beyond. After the SO/IH has completed training on MIOSHA safety and health standards, the Investigative Interviewing Techniques and Inspection Techniques and Legal Aspects courses are required to be taken at the OTI.

New technical staff has greater training requirements than experienced MIOSHA technical employees and are permitted to attend one or more out-of-state technical courses per year for the first three years of their career as time and funding allows. Experienced MIOSHA employees will be permitted, upon approval, to attend one out-of-state technical course every three years.

Employees are trained on significant changes in agency or division policies and procedures that affect their job tasks as needed throughout the year. These trainings are on-going and conducted during staff meetings. Staff is expected to stay current on changes by reading new and revised documents as they are published in the MIOSHA Messenger, a bi-weekly internal newsletter for staff. Supervisors are responsible for assessing individual training needs and discussing training needs as a part of the employee performance evaluation.

* 1. OSHA Information System

MIOSHA uses a combination of administrative and technical staff to enter information into OIS. When necessary, shared drives are used to transfer information between district offices and the main office. MIOSHA’s GISHD uses an ACCESS database called the ‘universal log’ to summarize data for tracking specific information about cases and is used to locate files within the office. Support staff runs reports from this database and OIS at least weekly and the reports are provided to supervisors to track case file status. Various other target dates are also tracked on the reports, including abatement and post citation activity. Data is entered into OIS and the ACCESS database in a timely manner.

* 1. State Internal Evaluation Program Report

For FY 2023, MIOSHA evaluated their fatality case files for FY2022 to ensure that all required reports (inspection and investigation) were included in the casefiles. This was conducted in response to the FY 2021 FAME that included a related Observation. The review indicated that fatality investigation files for FY 2022 contained the necessary reports from OIS.

* 1. Staffing

MIOSHA’s administration consists of five divisions, each of which is headed by a director. The divisions are General Industry Safety & Health (GISHD); Construction Safety & Health (CSHD); Technical Services (TSD); Consultation, Education & Training (CET); and Appeals. In addition to the directors, GISHD has 13 managers/supervisors; CSHD has six managers/supervisors; and TSD has three managers/supervisors. MIOSHA staffing was comprised of 146.84 FTE in FY 2023.

The benchmark for safety and health has been 56 and 45 positions, respectively. In FY 2023, 43 safety and 31 health compliance officer positions were allocated, however, Michigan does not have 18(e) final approval.

### ENFORCEMENT

During FY 2023, MIOSHA conducted 3,378 inspections: 2,329 safety and 1,049 health. The total number of inspections decreased 6% from 3,599 inspections in FY 2022. This decrease in inspection activity is largely attributed to staffing vacancies that the program has been actively filling. Therefore, the total number of inspections should continue to increase as staffing increases. This metric does not rise to the level of an observation. End of year inspection reports show that 1,787 inspections were programmed, 998 were complaints and referrals, 218 employer self-reports and 40 follow-ups. (Source: SAMM and SIR reports dated November 14, 2023, and Inspection Summary report dated February 7, 2023)

* 1. Complaints

During FY 2023, MIOSHA received 2,466 complaints that were coded as valid, of which 2,232 (90%) were formal and 234 (10%) were nonformal. The average number of days to initiate a complaint inspection in FY 2023 was 6.78, below the negotiated standard of 10 days. The average number of days to initiate a complaint investigation was 4.39, significantly below the negotiated standard of eight days.

MIOSHA’s complaint process is defined in Chapter IV of the MIOSHA Field Operations Manual (FOM). Inspections will be conducted in response to complaints when specific criteria are met, including:

* + - The complaint is reduced to writing, signed by a current employee, employee representative, or former employee and the complainant states the reason for the inspection request. The complaint must also indicate there has been a violation of a safety or health standard or hazard.
    - The complaint alleges physical harm, such as disabling injuries or illnesses have occurred as a result of an alleged hazard, and there is reason to believe the hazard still exists.
    - The complaint alleges an imminent danger situation.
    - The complaint identifies an establishment or hazard covered by a local or special emphasis.
    - The employer fails to provide an adequate response to a letter inspection, or the complainant provides evidence that the employer’s response is false or does not adequately address the hazard(s).
    - The establishment that is the subject of the complaint has a history of instance-by- instance, willful, or failure-to-abate citations.
    - A whistleblower investigator requests that a complaint inspection be conducted.
    - A companion complaint can be scheduled for inspection if it is a complaint that would normally be investigated by telephone/fax and an on-site inspection has already been scheduled or begun.
    - When a complainant does not provide their name and address for a complaint on a construction site, the CSHD can schedule an on-site inspection due to rapidly changing conditions on the site.

MIOSHA refers to complaints addressed with the employer by letter and/or telephone as off-site inspections. These are complaints which do not meet the criteria for an on-site inspection. In the case of a *letter complaint inspection*, MIOSHA advises the employer of the alleged hazards by

telephone, fax, letter, and/or email. The employer is required to provide a written response and MIOSHA provides a copy of the response to the complainant upon request. In situations of an other-than-serious nature, when it is believed that the issue(s) can quickly be addressed by telephone, a *telephone complaint inspection* may be conducted. After contacting the employer, explaining the allegations, and providing abatement assistance as necessary, MIOSHA sends a letter to the employer and the complainant summarizing the findings if they are satisfied the conditions have been addressed. OSHA randomly selected 15 letter inspections for review during this evaluation of the MIOSHA program. No deficiencies were identified during this review.

* 1. Fatalities

A total of 37 fatalities were reported to MIOSHA in FY 2023, a decrease from 50 in FY 2022. All of the fatalities were responded to within one day, in accordance with the MIOSHA FOM, giving a 100% SAMM 10 result.

MIOSHA’s Five-Year Strategic Plan for FY 2019-2023 outlines a reduction of fatalities in both general industry and construction by 10% and 5% respectively over the five years. The targets each year are the number of fatalities that occurred in the prior calendar year and are compared to baselines. For example, the general industry baseline is the number of program-related fatalities during CY 2017. The construction baseline is the average fatality rate for calendar years 2013-2017. MIOSHA began a new Five-Year Strategic Plan starting in FY24.

Information about fatalities is recorded in OIS and in MIOSHA’s fatality report. MIOSHA’s FOM, Fatality Procedures Manual, and instruction MIOSHA-COM-06-1R4 Inclusion of Victim’s Families in Fatality Investigations, detail fatality procedures, including initial notification and follow-up communication with next-of-kin. The agency instructions were most recently updated in 2021.

MIOSHA’s FOM and Fatality Procedures Manual contain procedures for conducting complete and thorough investigations. Investigations are to determine whether a violation of MIOSHA safety and health standards, regulations, or the general duty clause occurred. The safety or health compliance officer is to identify witnesses and conduct interviews as early as possible. The files are to be documented with the victim’s personal data, incident data, equipment or processes involved, witness statements, safety and health programs, analysis of multi-employer worksite, and requested records. Additionally, the investigation is recorded and tracked in OIS through the completion of various forms and modules. Forms completed in OIS and letters sent to the next- of-kin are to be included in the case file.

For FY 2023, 37 fatality casefiles were reviewed, including those with non-jurisdictional fatality events. Two (2) of the fatality case files reviewed did not include copies of the initial next of kin (NOK) letters. Two (2) additional files did not include the fatality UPA in the inspection file. Two casefiles did not include expected employer documents in the inspection file, to include copies of training records or other programmatic documents. Six of the inspection files contained limited employer knowledge and/or management interview statements. These items do not rise to the level of an observation.

* 1. Targeting and Programmed Inspections

During FY 2023, MIOSHA conducted 3,378 inspections, with approximately 53% opened as programmed inspections. MIOSHA’s strategic management plan emphasizes a 10% reduction in injuries and illnesses (Total Recordable Cases, TRC) in eight industries selected as having rates above the state average. FY 2023 was the final year of the strategic management plan and MIOSHA met their goal of 2% reduction for five of the eight industries. MIOSHA determines whether to continue an emphasis after a 10% reduction is achieved. The following industries were included: wood product manufacturing, primary metal manufacturing, fabricated metal product manufacturing, machinery manufacturing, transportation equipment manufacturing, support activities for transportation, hospitals, and nursing and residential care facilities.

Sites receiving priority for inspections in MIOSHA’s GISHD are selected from directories (for example, Hoovers) of establishments in specific NAICS (North American Industry Classification System) codes targeted in the five-year strategic plan. Dodge lists of major projects provided by the University of Tennessee in the state are sorted and used for scheduling construction (CSHD) inspections. The targeting plan is designed to get staff on-site at randomly selected projects when they are between 30 and 60% complete, when the greatest number of employees is expected to be on the construction site. In addition, construction safety officers and industrial hygienists identify construction projects while traveling in their work areas. Field staff is also expected to stop and conduct inspections for potential imminent danger conditions viewed. This includes: employees working at heights with a high probability of falls resulting in death or serious injuries; employees working in trenches greater than five feet deep with no protective systems in place; employees working with cranes, boom trucks, aerial lift platforms in close proximity to overhead power lines; employees working on roadway projects where the lack of traffic control may be a hazard; and employees working on projects where there is the potential for excessive exposure to lead, silica, noise, asbestos, hexavalent chromium, or isocyanate containing compounds.

* 1. Citations and Penalties

Chapter VI of MIOSHA’s FOM contains the requirements and policies for citations and penalties. The citations and penalties are reviewed at multiple levels in MIOSHA’s management organization prior to issuance. MIOSHA citations are not to be issued more than 90 days after the completion of the physical inspection or investigation of the establishment. Completion of the physical inspection has been considered the date of the closing conference.

Similar to OSHA’s recommendation letter, MIOSHA utilizes a Notice of Potential Hazard (NPH) form to provide information to the employer on how to correct an identified hazard, when a MIOSHA rule does exist that can be applied to the identified hazard, but employee exposure cannot be determined or is not sufficient to document a violation.

MIOSHA’s 3,378 inspections resulted in 6,187 violations identified. Seventy-one percent (71%) of the inspections resulted in violations (serious, willful, repeat, or other-than-serious), with 49% of those violations classified as serious, willful or repeat. The average number of serious/willful/repeat violations per inspection was 1.20. The FRL is +/-20% of the three-year national average of 1.75, which equals a range of 1.40 to 2.10. The average number of other-than-serious violations per inspection was 1.24. The FRL is +/-20% of the three-year national average of 0.89, which equals a range of 0.71 to 1.07. MIOSHA’s average violations per inspection falls slightly outside of the expected range for both serious and other-than-serious violations. Casefile reviews found that there were four safety inspections where violations were classified as other-than-serious for hazards related to machine guarding, control of hazardous energy (LOTO), electrical, fall and powered industrial vehicle hazards. This review did not identify a trend that rises to the level of an observation at this time.

MIOSHA’s FOM and instruction MIOSHA-COM-15-4R1 Employee Interviews in Safety and Health Investigations, contain procedures for the documentation of inspections. Information to be documented includes, but is not limited to: inspection report, narrative, interview statements, photographs, safety & health management system evaluation, records obtained during the inspection, diary sheet, chronology of actions taken, employee exposure, potential exposure, employer knowledge, measurements, control measures in place, and training.

Casefile reviews of 73 safety and health inspection casefiles (both General Industry and Construction) were conducted for cases opened/closed during FY 2023. Review of the casefiles identified general deficiencies in 38 (52%) of the files reviewed, with respect to documentation and consistency, however, no trends were identified with any specific area in need of improvement. These deficiencies included the following items: violation worksheets with incomplete information on the hazard description, equipment, measurements and locations of the violative condition; lack of evidence of prior inspection/citation history conducted and documented in the casefile for application of history penalty reduction factor; lack of documented severity/probability justifications; lack of photo evidence to support in-compliance cases; and lack of emphasis program coding. These items were discussed with MIOSHA management; however, no specific trends were identified that rise to the level of an observation at this time.

The average current penalty per serious violation in the private sector during FY 2023 was

$1,362.91 (SAMM 8: 1-250+ workers). The FRL is -25% of the three-year national average ($3,625.21), which equals $2,718.91. In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually according to the Consumer Price Index (CPI). The Michigan State Plan has not yet completed the legislative changes to increase maximum penalties. This topic is addressed further under Standards and Federal Program Change (FPC) Adoption below.

* 1. Abatement

The compliance officer and their supervisor determine a reasonable abatement period using their best judgement. Abatement dates exceeding 30 days are not normally necessary. However, if an initial abatement date is granted in excess of 30 days, the reason is documented in the case file.

MIOSHA instruction MIOSHA-COM-05-2R5 requires abatement documentation, for all serious, willful, repeat and failure-to-abate (FTA) notifications, that is adequate to assure the department that the citation has been abated. The MIOSHA FOM outlines examples of abatement documentation and includes photographic or video evidence; evidence of purchase or repair of equipment; training records; and/or safety and health professionals’ reports. Employers are not required to submit abatement for violations which were abated and observed by compliance officers during the on-site portion of the inspection.

Casefile reviews of safety and health inspection files demonstrated that MIOSHA receives adequate abatement documentation from employers responding to citations. Evidence was easy to locate in the files, and the review of the abatement documentation was well-documented in the casefiles that were reviewed.

An employer can petition the Board of Safety Compliance and Appeals for an extension of the abatement date (PMA) after a citation has become a final order. Late requests accompanied by a statement of exceptional circumstances are submitted to the Appeals Division for the Board’s consideration. A PMA that is filed timely and meets all of the requirements will be granted by the issuing division on behalf of the Board.

If an employer does not respond to requests for abatement documentation and provide appropriate documentation within 30 days after the final request, a supervisor will generally assign a follow- up inspection. Follow-up inspections may be assigned for all fatalities, willful, and high gravity serious violations regardless of abatement received, unless the condition was abated during the

on-site inspection. Follow-up inspections may also be conducted on a random basis or when deemed necessary. Follow-up inspections must be conducted by a safety officer or industrial hygienist within 30 days of assignment.

A review of the end-of-year State Indicator Report (SIR) for FY 2023 shows 289 cases with outstanding abatement in excess of 60 days past due. These cases are primarily construction industry cases. Staffing vacancies have been the primary cause of this backlog. The program has been making a significant effort to reduce the number of cases with open abatement and has decreased this number by more than 50% during the 3rd and 4th quarters of FY 2023.

* 1. Worker and Union Involvement

Section 29(4) of the MIOSHA Act and Chapter V of the MIOSHA FOM require that an employee representative be given an opportunity to participate in the inspection. This includes the opening conference, walk around and closing conference. In August 2022, MIOSHA issued Instruction MIOSHA-COM-15-4R2 – Interviews in Safety and Health Investigations, to provide additional guidance to field staff on conducting interviews in private during enforcement inspection activities.

SAMM 13, Percent of initial inspections with worker walk around representation or worker interview, was slightly less than the 100% FRL, at 99.62%. However, OSHA believes this is a matter of coding with respect to inspections opened on multi-employer worksites where an employer may not have employees at the site, or sites where union representatives declined the opportunity to participate in the inspection.

Instruction MIOSHA-COM-04-2R2 Appeal and Settlement Processes for MIOSHA Enforcement Divisions states that an employer may file a first appeal in writing, seeking modification or dismissal of a citation, proposed penalty, and/or an extension of time for abatement within 15 days of the receipt of a citation. An employee or employee representative may appeal in writing the reasonableness of the abatement date(s). Michigan Rule 408.21417(1) requires an employer post a copy of an appeal notice at the place where citations are posted and provide a copy of the notice to an authorized employee representative. The notice must inform the affected employees of their right to party status.

A second appeal is considered a formal appeal and must be delivered by the employer to the issuing division within 15 working days of the employer’s receipt of the issuing division’s decision in response to the first appeal. For employees or an employee representative that has elected party status, arrangements must be made to include them in pre-hearing discussions. When an employee representative has been identified during the inspection and has requested copies of the citation(s) or has elected party status at the second appeal level, contact with the employee representative is to be made to advise them of any settlement agreement in which there will be a significant modification to the citation(s) or abatement date(s). A significant modification to the citation includes vacating or dismissal; standard or rule change; or classification change.

### REVIEW PROCEDURES

Section 41 of the MIOSHA Act and instruction MIOSHA-COM-04-2R2 describe the policies and procedures to be followed in the application of the appeals process. In addition to the appeal rights afforded by the MIOSHA Act, MIOSHA has implemented a Penalty Reduction Agreement (PRA) program, formerly known as an informal settlement agreement, that can result in a 50% reduction if completed within 15 working days from the date the citations were received by the employer.

MIOSHA has two levels in the appeals process. Initially, an employer can request to have a citation modified, a citation or penalty dismissed, or an abatement date extended. The issuing division managers makes the decision on this first level appeal. Thereafter, the employer can accept the decision and it will become a final order or the employer can file a second appeal. The second appeal is transmitted to the Board of Health and Safety Compliance and Appeals, and a prehearing conference is held in an attempt to settle the citations. If not settled, the case will be heard by an administrative law judge who issues a written decision.

In the case files reviewed during the FY 2023 file review, the majority of the changes were penalty reductions for settlement purposes. Approximately 61.5% of penalties were retained.

### STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

* 1. Standards Adoption

During FY 2022 and FY 2023, six applicable standards were required to be adopted, including the annual adjustments to civil penalties, COVID-19 Vaccination and Testing/Emergency Temporary Standard, COVID-19 Log provisions for healthcare, and Improvements to ITA Tracking.

**Adoption of Maximum and Minimum Penalty Increases**

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties.

See 81 FR 43429. As required by law, OSHA then increased penalties annually, including on January 12, 2023, according to the Consumer Price Index (CPI). See 2023 Annual Adjustments to OSHA civil penalties, <https://www.federalregister.gov/documents/2023/01/13/2023-00271/federal-civil-penalties-inflation-adjustment-act-annual-adjustments-for-2023>[; 88 FR 2210 (Jan. 13, 2023).](file:///C:\Users\cpositano\Downloads\to%20OSHA%20Civil%20Penalties,%20available%20at%20https:\www.osha.gov\memos\2022-01-13\2022-annual-%20adjustments-osha-civil-penalties;%2087%20FR%202328%20(Jan.%2011,%202023))

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

The MIOSHA State Plan is required to adopt maximum and minimum penalty increases that are at least as effective as the Agency’s most recent increase issued in January 2023, without further delay. OSHA recognizes that the state has needed to implement legislative changes before this adoption can be completed. A letter to the MIOSHA State Plan informing that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on September 3, 2021.

The MIOSHA State Plan responded on September 29, 2021. This response included the following action plan: MIOSHA drafted proposed language to revise Section 35 of the Michigan Occupational Safety and Health Act, Act 154 of 1974 (as amended). MIOSHA currently has a sponsor for a proposed bill and is working on updating draft bill language to re-introduce to the state legislature. Until an at least as effective maximum and minimum penalty levels are adopted, the following finding will remain open.

**Finding FY 2023-01:** MIOSHA State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation FY 2023-01**: MIOSHA State Plan should work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels.

MIOSHA continues to provide timely notification to OSHA regarding all state-initiated standard changes. Additionally, MIOSHA proposed and adopted several new and amended state rules during FY 2023 in order to be as effective as the OSHA standards. It should be noted that the Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn, and therefore not expected to be adopted by the State Plan. Michigan Rule changes addressed the following topics: fire brigades, portable fire extinguishers, excavation/trenching and shoring, and steel erection.

#### Table A

**Status of FY 2022 and FY 2023 Federal Standards Adoption**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Standards** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption**  **Date** |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 11/8/2021 | Yes | Yes | 12/5/2021 | 12/5/2021 |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910 (11/5/2021) | 1/7/2022 | 1/26/2022 | No | No | 1/24/2022 | NA |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903 (1/15/2022) | 3/15/2022 | 1/18/2022 | Yes | Yes | 7/15/2022 | -- |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 3/9/2022 | Yes | Yes | 8/14/2022 | 10/26/2021 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903 (1/15/2023) | 3/15/2023 | 2/22/2023 | Yes | Yes | 7/15/2023 | -- |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 9/27/2023 | Yes | Yes | 1/21/2024 | 2/13/2024 |

* 1. Federal Program Change (FPC) Adoption

All FPC responses for FY2022 and FY2023 were submitted timely. MIOSHA continues to communicate FPC intents during quarterly meetings and keeps the State Plan Application system updated.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Adoption**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/29/2023 | Yes | Yes | 7/30/2023 | 5/31/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026 (7/13/2023) | 9/11/2023 | 8/28/2023 | Yes | Yes | 1/9/2024 | 10/13/2023 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 6/1/2022 | Yes | Yes | 11/3/2022 | 8/1/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/3/2022 | Yes | No | 2/11/2023 | 1/1/2023 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/1/2022 | Yes | Yes | 3/15/2023 | 12/1/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 3/29/2023 | Yes | No | 8/6/2023 | 5/31/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/21/2023 | Yes | No | 10/28/2023 | 7/31/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 10/30/2023 | Yes | No | 3/27/2024 | 3/27/2024 |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 1/3/2022 | No | NA | NA |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024 (4/8/2022) | 6/8/2022 | 6/1/2022 | Yes | Yes | 6/17/2022 |

### VARIANCES

There were no variance requests received or variances granted during FY 2022 and FY 2023.

### STATE AND LOCAL GOVERNMENT WORKER PROGRAM

MIOSHA’s state and local government worker program operates identically to the private sector program. As with the private sector, state and local government employers can be cited with monetary penalties. The penalty structure for both sectors is the same. In FY 2023, MIOSHA conducted 106 inspections of state and local government workplaces, 3.14% of the total number of inspections conducted in Michigan. This number was slightly higher than the SAMM 6 FRL of +/- 5% of 2.43%, which equals 2.31% to 2.55%, however, there is no concern with this metric being slightly higher than the FRL. During the FY 2023 review, there were no apparent differences between the state and local government and private sector case files reviewed.

### WHISTLEBLOWER PROGRAM

MIOSHA’s Whistleblower Protection Program consists of a manager and three investigators. Procedurally, the MIOSHA Whistleblower Program adheres to OSHA’s Whistleblower Investigations Manual (WIM), CPL 02-03-007, which provides guidelines for the investigation and disposition of discrimination complaints.

During the period covered by this report, the program employed three full-time whistleblower investigators in addition to the manager. All intakes are reviewed by the manager in Lansing, who then assigns them to the investigators for screening. The investigators work from home offices and are expected to cover the entire state. The current manager started in 2004 as a whistleblower investigator and took over as the Program Manager in 2022. The other three investigators have been on board since 2012, 2015 and 2022. Each of the investigators has been through the Basic Whistleblower Investigation course at the OTI.

MIOSHA follows investigation procedures that are similar to OSHA’s but deviate in a couple of areas. For example, MIOSHA does not share the Complainant’s statement with the Respondent, nor do they share the Respondent’s position with the Complainant. This is to avoid having to put the documents through the Freedom of Information (FOIA) office prior to sharing, which would create delays in the investigation process. MIOSHA does provide the MIOSHA discrimination complaint form when notifying the respondent. Additionally, MIOSHA does not send the Respondent notification at the same time the Complainant’s docketing letter is sent. The reason is to ensure the Complainant is interested in moving forward by obtaining a signed complaint prior to notifying the respondent. Most Complainant statements are performed in-person and witness interviews are performed onsite. If Complainant is in a remote part of the state, travel costs may be prohibitive unless it is certain the case will move forward.

MIOSHA’s appeal review system provides Complainants with an effective process for review of their cases. Unlike OSHA’s committee review, MIOSHA offers Complainants the opportunity for a hearing before an Administrative Law Judge (ALJ).

1. Review Process

MIOSHA utilizes the policies and procedures contained in the OSHA Whistleblower Investigations Manual (WIM). Accordingly, this review followed the guidelines, procedures, and instructions of OSHA’s WIM, CPL 02-03-011, effective April 29, 2022.

This review occurred between January 29, 2024, through February 2, 2024. Reports utilized from OSHA’s Whistleblower Application include the Whistleblower Case Listing, Length of Investigation, Activity Measures, and Investigation Data Report for the same period.

The case files reviewed were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Forty of the 110 (36%) completed case files were reviewed.

1. OITSS Reports

A review of the Whistleblower State Plan Investigation Data report for the review period indicated that of the 110 completed cases, 29 (26%) were withdrawn, 61 (55%) were dismissed, and 14 (13%) were found to have merit, with 12 of the 14 (86%) merit cases resulting in settlement.

While there are some procedural and administrative differences between MIOSHA and OSHA’s Whistleblower Protection Programs, the merit / non-merit determinations made by MIOSHA were generally consistent with the evidence and reasoning contained in all case files reviewed.

1. Complaint Intake and Screening

Intakes and complaints are distributed by the manager and an administrative assistant. Complaints are screened by the investigators. All complaints that were docketed were timely filed, within the state’s jurisdiction, and properly screened. During FY 2023, MIOSHA administratively closed 271 complaints.

1. Administrative Closure

Fifty administratively closed intakes were reviewed during the course of this evaluation. Several observations were made from the review of these intakes related to contact with the Complainant, usage of case diary sheets and documenting delivery receipt of correspondence. Although the absence of a case diary sheet does not change the outcome of an administrative closure, it provides the reader with the events leading up to the decision to administratively close a claim. It should also be noted that although full field investigation case files were found to contain Case Activity Logs, they were seldom complete, in that they failed to reference calls with parties or whether or not the case file had been reviewed prior to closure. The case files were obviously reviewed by a supervisor as the supervisor signed all of the closure letters prior to closure.

**Observation FY 2023-OB-01:** Eleven (22%) of the 50 the administratively closed whistleblower intakes reviewed were closed without Complainant contact. The Complainant was sent an Administrative Closure letter that claimed there was no protected activity and/or no adverse employment action being the reason no action was being taken on their complaint.

**Federal Monitoring Plan FY 2023-OB-01:** OSHA will discuss and evaluate MIOSHA’s internal audit conducted in this area during quarterly monitoring meetings.

**Observation FY 2023-OB-02**: Forty-four (88%) of the 50 administratively closed whistleblower case files reviewed lacked a copy of the case Diary Sheet.

**Federal Monitoring Plan FY 2023-OB-02:** OSHA will discuss and evaluate MIOSHA’s internal audit conducted in this area during quarterly monitoring meetings.

**Observation FY 2023-OB-03:** Twenty-one (52%) of the 40 administratively closed whistleblower files that were reviewed during the evaluation, and which were closed without Complainant contact, due to the lack of a protected activity, adverse employment action, jurisdiction, etc., lacked verification of the closure letter’s delivery.

**Federal Monitoring Plan FY 2023-OB-03:** OSHA will discuss and evaluate MIOSHA’s internal audit conducted in this area during quarterly monitoring meetings.

1. Complainant Statement and Interviews

MIOSHA investigators complete a complainant statement for each complaint assigned to them. All case files contained complainant interview statements. Complainant statements may be taken over the phone, especially for complainants located a long distance from the investigator; however, MIOSHA prefers to handle all interviews in person when possible. Complainant interview statements are not redacted nor shared with the respondent. MIOSHA utilizes the MIOSHA discrimination complaint form, like an OSHA-87, and shares that when notifying the respondent due to the time delay it would cause by having to send all statements through the FOIA office. (Note: this is the same for the respondent position statements. Each investigator completes a summary of the position statement, which is shared with complainants).

Investigators also complete a Complainant Interview Checklist which puts a complainant on notice that they have been made aware of certain things regarding the investigative process and the dos and don’ts. Use of the form prevents complainants from claiming later that they were not told or didn’t know their responsibilities during the investigation and is a best practice.

1. Report of Investigation

MIOSHA prepares a Report of Investigation (ROI) when the complaint resulted in a full field investigation. The manager reviews all investigation files and signs and dates the ROIs and closing letters. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed in accordance with the streamlined procedures, allowing a Case Summary to be used in lieu of the ROI. The ROI used by MIOSHA follows the criteria provided in the WIM. All dismissal determinations were supported by evidence in the files.

**Observation FY 2023-OB-04:** Disparate Treatment was not fully evaluated in 11 (46%) of the 24 full field whistleblower case files that were reviewed. However, it was determined that lack of this full evaluation would not have changed the overall determination of the cases.

**Federal Monitoring Plan FY 2023-OB-04:** OSHA will discuss and evaluate MIOSHA’s internal audit conducted in this area during quarterly monitoring meetings.

1. Secretary’s Findings

MIOSHA does not utilize a Secretary’s Findings similar to that contained in OSHA’s WIM. MIOSHA alternatively utilizes a letter that adequately sets forth the determination and provides the respective party their right to appeal the MIOSHA determination.

1. Settlements

Twelve (12) cases were settled during the review period. Six of the cases were reviewed and six were coded settled and one was coded settled other. All files contained fully executed copies of the agreements as well as closing letters to Complainant and Respondent. All files contained information regarding how the remedy was determined and agreed to.

1. Casefile Management

Each of the investigation files reviewed was organized in accordance with the WIM. While all files contained a Table of Contents and exhibits were separated by divider pages, tabs were not used.

1. Resources

Based on file reviews, the training provided and available to investigators appears to be adequate. MIOSHA investigators attend courses through the Directorate of Training and Education when possible and when the courses are available. The manager meets with staff each month to have case discussions and provide any necessary updates regarding policies and procedures.

While there are slight differences procedurally from those of OSHA, it was concluded after review of the investigation files that the determination reached in each case was supported by the evidence and documentation contained in the files. Procedures are in place which provide for effective and timely investigations, subsequent review, and an effective appeals system.

### COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

No CASPAs were received regarding MIOSHA during FYs 2022 and 2023.

### VOLUNTARY COMPLIANCE PROGRAM

* 1. Cooperative Programs (MVPP)

MIOSHA’s Voluntary Protection Program (MVPP) assists employers and employees by providing a mechanism and a set of criteria designed to evaluate and recognize outstanding safety and health management systems. MIOSHA follows their Voluntary Protection Program (MVPP) Policies and Procedures Manual which follows OSHA’s CSP 03-01-005 Voluntary Protection Programs (VPP): Policies and Procedures Manual (January 30, 2020).

At the end of FY23, there were 24 MVPP sites, with two additional sites pending application and onsite reviews.

* 1. Partnerships

MIOSHA had seven active Partnerships in effect during FY 2023. These included one General Industry Partnership, and six Construction Industry Partnerships. MIOSHA instruction ADM-04-1R4, Partnerships for Worker Safety and Health, is consistent with OSHA’s Strategic Partnership Program for Worker Safety and Health, CSP 03-02-003 (November 6, 2013). MIOSHA enters into cooperative relationships with an individual employer, employees, and/or their representatives. Partnerships may be developed with a group of employers, employees and/or their representatives in order to encourage, assist, and recognize their voluntary efforts to focus on and eliminate serious hazards and achieve a high level of safety and health partnerships.

* 1. Alliances

In FY 2023, there were 19 MIOSHA Alliances at year end, including new alliances and renewals. Instruction MIOSHA-ADM-03-3R4, Alliance Policies and Procedures, is consistent with OSHA’s Alliance Program, CSP 04-01-002, (July 29, 2015).

#### STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

MIOSHA has declined to enter consultation information for state and local government (SLG) entities into OIS as the activities are completed by 100% state funded consultants. Rather, MIOSHA provides updates on the number of activities during quarterly monitoring meetings, as requested. During FY 2023, MIOSHA’s activities with SLG entities included: 78 training sessions, 226 consultations, four hazard surveys, and four safety and health evaluations.

## Appendix A – New and Continued Findings and Recommendations

FY 2023 MIOSHA Comprehensive FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or FY 2022-OB-#** |
| FY 2023-01 | The MIOSHA State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | The MIOSHA State Plan should work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels. | FY 2022-01 |

**Appendix B – Observations Subject to New and Continued Monitoring**

FY 2023 MIOSHA Comprehensive FAME Report

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Observation # FY 2023-OB-#** | **Observation# FY 2022-OB-**  **# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
|  | FY 2022-OB-01 | Five of the fatality case files reviewed for FY 2021 did not include a copy of the fatality report and/or the investigation report. Two of 20 (10%) did not contain a copy of the fatality report. Four of 20 (20%) did not contain a copy of the investigation report. | During next year’s comprehensive FAME, case files will be reviewed to determine if this item was addressed. | Closed |
|  | FY 2022-OB-02 | Four of 20 (20%) fatality casefiles reviewed for FY 2021 did not contain an initial and/or results letter to the next- of-kin. | During next year’s comprehensive FAME, case files will be reviewed to determine if this item was addressed. | Closed |
|  | FY 2022-OB-03 | In the case of whistleblower complaints referred from OSHA, MIOSHA  maintains a practice of entering MIOSHA’s receipt date as the filing date rather than the  date the complaint was filed with OSHA. | During next year’s comprehensive FAME case files will be reviewed to determine if this item was addressed. | Closed |
| FY 2023-OB-01 |  | Eleven (22%) of the 50 the administratively closed intakes reviewed were closed without Complainant contact. The Complainant was sent an Administrative Closure letter that claimed there was no protected activity and/or no adverse employment action being the reason no action was being taken on their complaint. | OSHA will discuss and evaluate MIOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-02 |  | Forty-four (88%) of the 50 administratively closed case files reviewed lacked a copy of the case Diary Sheet. | OSHA will discuss and evaluate MIOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-03 |  | Twenty-one (52%) of 40 administratively closed files that were reviewed during the evaluation, and which were closed without Complainant contact, due to the lack of a protected activity, adverse employment action, jurisdiction, etc., lacked verification of the letter’s delivery. | OSHA will discuss and evaluate MIOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |
| FY 2023-OB-04 |  | Disparate Treatment was not fully evaluated in 11 (46%) of the 24 full field case files that were reviewed. | OSHA will discuss and evaluate MIOSHA’s internal audits conducted in this area during quarterly monitoring meetings. | New |

**Appendix C - Status of FY 2022 Findings and Recommendations**

FY 2023 MIOSHA Comprehensive FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if**  **Applicable)** | **Current Status (and Date if Item is**  **Not Completed)** |
| FY 2022-01 | MIOSHA did not adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and  subsequent annual penalty amount increase. | MIOSHA should continue to work with its legislative officials to pass legislation to adopt OSHA’s maximum penalties. | MIOSHA is in the process of finding a sponsor for a bill to increase the maximum civil penalties in the Michigan Occupational Safety and Health Act. MIOSHA will use the letter dated September 2, 2021, from Acting Assistant US Secretary of Labor, James Frederick, to the LEO Director on the subject and the FAME finding to communicate the necessity of the legislation. Draft bill language has been written and submitted to MIOSHA’s legislative liaison. To educate stakeholders, MIOSHA is conducting outreach on the importance of aligning the maximum penalties with OSHA. |  | Open |
| FY 2022-02 | When a whistleblower complainant does not return a signed statement within a specified time, MIOSHA closes the complaint as withdrawn contrary to the OSHA Whistleblower Investigations Manual (WIM). | Follow the WIM for the appropriate type of determination when the complainant fails or chooses not to return a signed statement. | In accordance with the OSHA WIM, MIOSHA will modify its 10-Day Non-Cooperation Letter to reflect that if a complainant fails to respond to the investigator’s requests for cooperation in the timeline provided, this will cause the complaint to be dismissed due to lack of cooperation on the complainant’s part. If non-cooperation persists after the timeline provided, the Determination letter to the complainant will state that the complaint is dismissed due to “lack of cooperation”, and it will inform the complainant of their right to appeal that determination. Staff will be trained on the new procedure. MIOSHA has already adopted the OSHA WIM by reference in division instruction GISHD-ADM-16-1R2, Whistleblower Program. | September 1, 2022 | Closed |

## Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 MIOSHA Comprehensive FAME Report

# U.S. Department of Labor

**Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SAMM**  **Number** | **SAMM Name** | **State Plan Data** | **Further Review Level** | **Notes** |
| **1a** | Average number of work days to  initiate complaint inspections (state formula) | 6.78 | 10 | The further review level is negotiated by OSHA and the State Plan. |
| **1b** | Average number of work days to initiate complaint inspections  (federal formula) | 4.21 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| **2a** | Average number of work days to initiate complaint investigations  (state formula) | 4.39 | 8 | The further review level is negotiated by OSHA and the State Plan. |
| **2b** | Average number of work days to initiate complaint investigations  (federal formula) | 4.32 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| **3** | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| **4** | Number of denials where entry  not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| **5a** | Average number of violations per inspection with violations by violation type (SWRU) | 1.20 | +/- 20% of  1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| **5b** | Average number of violations per inspection with violations by  violation type (other) | 1.24 | +/- 20% of  0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from 0.71 to 1.07 for OTS. |
| **6** | Percent of total inspections in  state and local government | 3.14% | +/- 5% of  2.43% | The further review level is based on a number negotiated by  OSHA and the State Plan through the grant application. The |

## Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 MIOSHA Comprehensive FAME Report

# U.S. Department of Labor

**Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | workplaces |  |  | range of acceptable data not requiring further review is from  2.31% to 2.55%. |
| **7a** | Planned v. actual inspections (safety) | 2,329 | +/- 5% of  3,092 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from  2.937.40 to 3,246.60 for safety. |
| **7b** | Planned v. actual inspections (health) | 1,049 | +/- 5% of  447 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The  range of acceptable data not requiring further review is from  424.65 to 469.35 for health. |
| **8** | Average current serious penalty  in private sector - total (1 to greater than 250 workers) | $1,362.91 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national  average. The range of acceptable data not requiring further review is from $2,718.91 to $3,4,531.51. |
| **8a** | Average current serious penalty in private sector  (1-25 workers) | $586.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national  average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| **8b** | Average current serious penalty in private sector  (26-100 workers**)** | $1,250.71 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from $3,125.46 to $5,209.10. |
| **8c** | Average current serious penalty in private sector  (101-250 workers) | $2,315.72 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from $4,539.03 to $7,565.05. |
| **8d** | Average current serious  penalty in private sector (greater than 250 workers) | $3,145.11 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national  average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| **9a** | Percent in compliance (safety) | 29.30% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from 25.38% to 38.08% for safety. |
| **9b** | Percent in compliance (health) | 38.75% | +/- 20% of | The further review level is based on a three-year national |

## Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 MIOSHA Comprehensive FAME Report

# U.S. Department of Labor

**Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  | 43.82% | average. The range of acceptable data not requiring further  review is from 35.06% to 52.58% for health. |
| **10** | Percent of work-related fatalities  responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| **11a** | Average lapse time (safety) | 29.53 | +/- 20% of  55.23 | The further review level is based on a three-year national  average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| **11b** | Average lapse time (health) | 68.23 | +/- 20% of  69.72 | The further review level is based on a three-year national  average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| **12** | Percent penalty retained | 61.50% | +/- 15% of  71.84% | The further review level is based on a three-year national  average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| **13** | Percent of initial inspections with worker walk-around  representation or worker interview | 99.62% | 100% | The further review level is fixed for all State Plans. |
| **14** | Percent of 11(c) investigations  completed within 90 days | NA\* | NA\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| **15** | Percent of 11(c) complaints that are meritorious | NA\* | NA\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| **16** | Average number of calendar days  to complete an 11(c) investigation | NA\* | NA\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| **17** | Percent of enforcement presence | 1.80% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further  review is from 0.70% to 1.17%. |

## Appendix D - FY 2023 State Activity Mandated Measures (SAMM) Report

FY 2023 MIOSHA Comprehensive FAME Report

# U.S. Department of Labor

#### Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan OITSS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.